

**Editor's note: Reconsideration denied by order dated July 29, 1980**

JIM ADAMS

IBLA 80-349

Decided May 15, 1980

Appeal from decision of the California State Office, Bureau of Land Management, holding the J & R placer mining claim abandoned and void. CA MC 9105.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Where a mining claim is located on July 4, 1976, and recorded with BLM on January 23, 1978, the evidence of assessment work must be filed with BLM on or before October 22, 1979. Evidence of assessment work received on December 3, 1979, is not filed timely and the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

APPEARANCES: Jim Adams, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Jim Adams appeals from a decision, dated January 17, 1980, of the California State Office, Bureau of Land Management (BLM), declaring the J & R placer mining claim abandoned and void for failure to file timely evidence of annual assessment work performed as required by 43 CFR 3833.2-1.

Appellant located the J & R mine on July 4, 1976. A copy of the official record of the notice of location was filed for recordation with BLM on January 28, 1978. The evidence of annual assessment work performed during the preceding assessment year was filed December 3, 1979.

[1] The pertinent regulation 43 CFR 3833.2-1(a), implementing section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), provides as follows:

3833.2-1 When filing is required.

(a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Appellant's mining claim was located before October 21, 1976, and recorded in 1978; therefore, evidence of annual assessment work must have been filed on or before October 22, 1979. Failure to file timely the evidence of annual assessment is deemed conclusively to constitute an abandonment of the claim. 43 U.S.C. § 1744(c) (1976), 43 CFR 3833.4(a).

Appellant states that the reason for the delay was that he did not receive a copy of the evidence of annual assessment work back from the county recorder until December 1, 1979. It was not necessary for appellant to wait until a copy of the assessment document was returned by the county. Under 43 CFR 3833.2-2, appellant could have filed a copy of the document with BLM before it was filed with the county and thus avoided the harsh result mandated by FLPMA.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Edward W. Stuebing  
Administrative Judge

